

Kelly McCarthy Sutherland, Esq., #168222  
 J. Kenneth Gorman, Esq., #102293  
 LOMBARDO & GILLES, LLP  
 318 Cayuga Street  
 Salinas, California 93901  
 Telephone: 831.754.2444  
 Facsimile: 831.754.2011

Attorneys for Plaintiffs  
 ASA Farms, Inc. and Braga Ranch

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

ASA FARMS, INC., a California corporation and  
 BRAGA RANCH,

Plaintiffs,

v.

FRESH 'N HEALTHY, INC., a Delaware  
 corporation, MARK WILLIAMS, an individual;  
 JACK PARSON, an individual; STEVEN  
 CINELLI, an individual; CHAD HAGEN, an  
 individual, SANTOS MARTINEZ, an individual;  
 DON BEAM, an individual; DARRYL  
 NICHOLSON, an individual; RICHARD MAY,  
 an individual; THOMAS COLOGNA, an  
 individual; PRESTWICK PARTNERS, LLC, a  
 California limited liability company; SOLSTICE  
 VENTURE PARTNERS, LLC, a business entity  
 form unknown; VFINANCE INVESTMENTS, a  
 business entity form unknown; FMP  
 VINEYARD, LLC, a New Mexico limited  
 liability company; BUTTONWOOD OPTION,  
 LLC, a business entity form unknown; DW, LLC,  
 a business entity form unknown; M SOLAZZO  
 TRUST 2002; P. SOLAZZO 1998; GIBBONS  
 FAMILY TRUST; BIXLER TRUST;  
 STEIGERWALD TRUST and CARTER TRUST,  
 and DOES 1 through 50, inclusive,

Defendants.

Case No. C08-00122JF

**DECLARATION OF J. KENNETH  
 GORMAN IN SUPPORT OF REPLY  
 TO OPPOSITION TO MOTION  
 FOR PRELIMINARY INJUNCTION**

1 I, J. Kenneth Gorman, declare:

2 1. I am an attorney at law licensed to practice before all Courts of the State of  
3 California and the Federal District Court for the Northern District of California and am one of  
4 the attorneys of record for Plaintiffs.

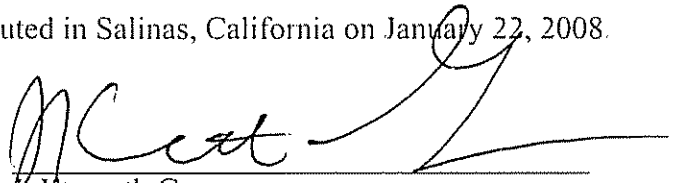
5 2. Pursuant to my instructions, as we were attempting to serve the pleadings in this  
6 matter, we directed our process server to Defendants' place of business, particularly since Mr.  
7 Cinelli's residence was in a gated community. The process server advised that the attempt of  
8 service at the place of business was unsuccessful because the business was abandoned and the  
9 only occupants were creditors of some type. A true and correct copy of the process server's  
10 declaration is attached hereto as Exhibit A.

11 3. Following the hearing on this motion on February 19, 2008, I spoke with Robert  
12 Izmirian of Buchalter Nemer, who introduced himself as the attorney for the bank for the  
13 Defendants. In summary, he advised that the Defendants were irremediably financially "under  
14 water," and with "de minimis" accounts receivable.

15 4. The attorneys from Murray & Murray introduced themselves as bankruptcy  
16 counsel for the Defendants.

17 5. I have received no information from any source indicating that the Defendants  
18 are not in serious financial jeopardy.

19 I declare under penalty of perjury that the foregoing is true and correct of my own  
20 knowledge and that this document was executed in Salinas, California on January 22, 2008.

21  
22   
23 J. Kenneth Gorman

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State (number, and address)) <b>Kelly McCarthy Sutherland, Esq.</b> <b>Lombardo &amp; Gillies</b> <b>318 Cayuga Street Salinas, CA 93901</b>  TELEPHONE NO : <b>(831) 754-2444</b> FAX NO : <b>(831) 754-2011</b> E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name). <b>Plaintiff</b>		FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: <b>280 S. 1ST ST. ROOM 2112</b>  MAILING ADDRESS:  CITY AND ZIP CODE: <b>SAN JOSE, CA 95113</b>  BRANCH NAME: <b>SAN JOSE/NORTHERN DISTRICT</b>		
PLAINTIFF/PETITIONER: <b>ASA Farms Inc, et al</b>  DEFENDANT/RESPONDENT: <b>Fresh 'N Healthy Inc, et al</b>		
<b>NON SERVICE REPORT</b>		
		CASE NUMBER: <b>C08-00122 PVT</b>

I received the within process on January 10, 2008 and that after due and diligent effort I have been unable to serve said person. The following itemization of the dates and times of attempts details the efforts required to effect service. Additional costs for diligence are recoverable under CCP §1033.5 (a)(4)(B)

**Servee:** Fresh 'N Healthy, Inc a Delaware corporation

As enumerated below.

01/10/2008 -- 02:54 pm

1851 Airway Dr  
Hollister, CA 95023

Bad address - location is vacant Per landlord, defendant moved and is filing for bankruptcy

01/10/2008 -- 05:43 pm

1851 Airway Dr  
Hollister, CA 95023

Stated client via fax. Holding for further instructions.

01/11/2008 -- 11:45 am

Per client (Ken Gorman) attempt service at 1600 Citation Wy, Hollister

01/11/2008 -- 03:00 pm

1600 Citation Wy  
Hollister, CA 95023

Attempted new address - there was a man there assessing the building who said that defendant is going out of business and also owes him money

01/14/2008 --

Sent report to client. Refer to our reference number P110737 for attempts at home address in Saratoga

County: Monterey  
Registration No.: 68  
Sayler Legal Service, Inc.  
455 Reservation Road, Suite E  
Marina, CA 93933  
(831) 384-4030

I declare under penalty of perjury under the laws of the State of California that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on January 11, 2008 at Marina, California.

Signature:

RAYMOND PETERSON

# NON SERVICE REPORT

Exhibit **A**

Order#: P110736/NonServe

**PROOF OF SERVICE**

I am employed in the County of Monterey, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 318 Cayuga Street, Salinas, California 93901.

On the date set forth below, I caused the following document(s) entitled:

**DECLARATION OF J. KENNETH GORMAN IN SUPPORT OF REPLY TO  
OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

to be served on the party(ies) or its (their) attorney(s) of record in this action listed below by the following means:

X	<b>BY MAIL.</b> By placing each envelope (with postage affixed thereto) in the U.S. Mail at the law offices of Lombardo & Gilles, 318 Cayuga Street, Salinas, California, addressed as shown below. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and in the ordinary course of business, correspondence would be deposited with the U.S. Postal Service the same day it was placed for collection and processing.
	<b>BY HAND-DELIVERY.</b> By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.
	<b>BY OVERNIGHT DELIVERY.</b> By placing with an overnight mail company for delivery a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to Lombardo & Gilles, addressed as shown below.
	<b>BY FACSIMILE TRANSMISSION.</b> By transmitting a true copy thereof by facsimile transmission from facsimile number (831) 754-2011 to the interest party(ies) or their attorney of record to said action at the facsimile number(s) shown below.

Stephen T. O'Neill, Esq.  
Robert A. Franklin, Esq.  
MURRAY & MURRAY  
19400 Stevens Creek Blvd., #200  
Cupertino, CA 95014-2548  
650-852-9000  
650-852-9244 (fax)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 22, 2008, at Salinas, California.

  
Cheryl L. Lilburn